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EXAMINER

PEYTON, DESMOND C

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARTIN BRUNNER and
MANFRED HINTERMAYER

Appeal 2015-004754
Application 11/922,583
Technology Center 3700

Before: STEFAN STAICOVICI, WILLIAM A. CAPP, and
LEE L. STEPINA, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision to reject claims 14, 15, 18–27, and 29–43. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

The claims are directed to a telescoping pull-out device. Independent claims 14 and 26, reproduced below with emphasis added, are illustrative of the claimed subject matter.

14. A telescoping pull-out device for household appliances and furniture, the telescoping pull-out device comprising:

a first carrier element;

a carrier catch element formed in the first carrier element;

a first telescoping rail movably supported on the first carrier element, the first telescoping rail being movable between an extended position in which the first telescoping rail is extended outwardly relative to the first carrier element and a retracted position in which the first telescoping rail is retracted relative to the first carrier element;

a closure component that is part of the first telescoping rail; the closure component having a projection projecting upwardly at an upper portion of the closure component; and

a closure component catch element formed onto the closure component, the closure component catch element engaging the carrier catch element when the first telescoping rail is in its retracted position,

wherein the first telescoping rail moves between its extended position and its retracted position along a rail movement axis, the first telescoping rail includes a distal end that is the end of the first telescoping rail that is furthest away from the carrier element when the first telescoping rail is in its extended position, and the closure component is formed at the distal end of the first telescoping rail.

26. A cooking appliance comprising:

a body for receiving an item to be cooked; and

a telescoping pull-out device mounted to the body, the telescoping pull-out device including:

a first carrier element;

a carrier catch element formed in the first carrier element;

a first telescoping rail movably supported on the first carrier element, the first telescoping rail being movable between an extended position in which the first telescoping rail is extended outwardly relative to the first carrier element and a retracted position in which the first telescoping rail is retracted relative to the first carrier element;

a closure component that is part of the first telescoping rail; the closure component having a projection projecting upwardly at an upper portion of the closure component; and

a closure component catch element formed onto the closure component, the closure component catch element engaging the carrier catch element when the first telescoping rail in its retracted position,

wherein the first telescoping rail moves between its extended position and its retracted position along a rail movement axis, the first telescoping rail includes a distal end that is the end of the first telescoping rail that is furthest away from the carrier element when the first telescoping rail is in its extended position, and the closure component is formed at the distal end of the first telescoping rail.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Jährling	US 6,976,597 B2	Dec. 20, 2005
Lin	US 2004/0174101 A1	Sept. 9, 2004
Erdmann	US 2006/0065265 A1	Mar. 30, 2006

REJECTIONS

- I. Claims 14, 15, 19–25, and 39 are rejected under 35 § U.S.C. 102(a) as anticipated by Lin.
- II. Claim 18 is rejected under 35 U.S.C. § 103(a) as unpatentable over Lin.
- III. Claims 38 and 41 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lin and Jährling.
- IV. Claims 26, 27, 29–36, 40, 42, and 43 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lin and Erdmann.
- V. Claim 37 is rejected under 35 U.S.C. § 103(a) as unpatentable over Lin, Erdmann, and Jährling.

OPINION

Rejection I

The Examiner finds that Lin discloses all of the elements recited in claim 14, and with respect to the recited first carrier element, the Examiner finds slide rack 3 corresponds to this element. Final Act. 2–4. The Examiner finds that suction tray 21, depicted in Figure 1 of Lin, corresponds to the recited carrier catch element formed in the first carrier element. Final Act. 2.

Appellants argue that suction tray 21 is not formed in slide track 3 because suction tray 21 is part of buffer assembly 2, which is disposed on top of slide rack 3. Appeal Br. 9.

In response, the Examiner explains the interpretation of the word “in” applied in the rejection of claim 14, stating:

The definition of the word “in” upon which the examiner relies is: *at or to a location that is near to something or that seems near to something, Merriam Webster, LearnersDictionary.com.* Examiner further notes that “formed in the first carrier element” is claiming how it’s made. In an apparatus claim like claims 14 and 26 the end product is considered and not the process by which it’s made or formed.

Ans. 4. Based on this interpretation, the Examiner reiterates that suction tray 21 of Lin satisfies the requirements of the carrier catch element recited in claim 14. Ans. 4.

Appellants contend that the appropriate interpretation of the word “in” in claim 14 is “included as part of.” Reply Br. 3–4. Thus, according to Appellants, suction tray 21 is not “in” slide rack 3 of Lin. *Id.*

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the Specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

“While the Board must give the terms their broadest reasonable construction, the construction cannot be divorced from the specification and the record evidence.” *In re NTP, Inc.*, 654 F.3d 1279, 1288 (Fed. Cir. 2011).

The Specification describes catch element 16 in a manner consistent with Appellants’ proffered definition of “in,” stating, “Punched or formed into the front end area of the carrier element 20 is a catch element 16 embodied as a latching lug which engages with a knob-shaped catch element 14 which is formed on the closure part 18.” Spec. 5. Neither the Specification nor figures present catch element 16 in a position outside of carrier element 20. In light of the Specification, we find the Examiner’s definition of the word “in” as used in claim 14 to be unreasonably broad. This overly broad definition led to the Examiner’s finding that suction

tray 21 depicted in Figure 1 of Lin corresponds to the recited carrier catch element formed in the first carrier element. We agree with Appellants' proffered definition that the term "in" as used in claim 14 means "included as part of." As shown in Figure 1 of Lin, suction tray 21 is not part of slide rack 3. Accordingly, we reverse the rejection of claim 14 and claims 15, 19–25, and depending therefrom as anticipated by Lin.

Rejections II and III

Rejections II and III suffer from the same deficiency as Rejection I (Final Act. 6–7), and for the reasons discussed above regarding Rejection I, we also reverse Rejections II and III, as the Examiner's modification of Lin and use of Jährling's disclosure does not remedy the deficiency of Lin discussed *supra*.

Rejections IV and V

Independent claim 26 recites the same features discussed above regarding the rejection of independent claim 14. Rejections IV and V suffer from the same deficiency as Rejection I (Final Act. 8–13), and for the reasons discussed above regarding Rejection I, we also reverse Rejections IV and V, as the Examiner's use of Erdmann's and Jährling's disclosures does not remedy the deficiency of Lin discussed *supra*.

DECISION

The Examiner's decision to reject claims 14, 15, 18–27, and 29–43 is reversed.

REVERSED